

# SENATE MOTION

**MADAM PRESIDENT:**

**I move** that Engrossed House Bill 1510 be amended to read as follows:

- 1 Page 22, line 23, after "IC 33-39-1-6" insert ", **IC 33-39-1-6.5**,".
- 2 Page 27, line 13, delete "." and insert "**or section 6.5 of this**
- 3 **chapter**."
- 4 Page 28, line 16, after "limit" insert "**the**".
- 5 Page 29, line 9, strike "chapter" and insert "**section**".
- 6 Page 29, between lines 11 and 12, begin a new paragraph and insert:
- 7 "SECTION 49. IC 33-39-1-6.5 IS ADDED TO THE INDIANA
- 8 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 9 [EFFECTIVE JULY 1, 2007]: **Sec. 6.5. (a) A special judge selected**
- 10 **under subsection (e) shall appoint a special prosecutor if:**
- 11 (1) a person files a verified petition requesting the
- 12 appointment of a special prosecutor in the circuit court
- 13 having jurisdiction in the county where the special prosecutor
- 14 is to serve; and
- 15 (2) the special judge, after:
- 16 (A) notice is given to the prosecuting attorney in the
- 17 county; and
- 18 (B) conducting an evidentiary hearing at which the
- 19 prosecuting attorney is given an opportunity to be heard;
- 20 finds by clear and convincing evidence that a special
- 21 prosecutor is necessary because of the prosecuting attorney's
- 22 malfeasance, misfeasance, or neglect of duty.
- 23 (b) Each person appointed to serve as a special prosecutor must:
- 24 (1) consent to the appointment; and
- 25 (2) be:
- 26 (A) a prosecuting attorney or a deputy prosecuting
- 27 attorney in a county other than the county in which the
- 28 person is to serve as special prosecutor; or
- 29 (B) subject to subsection (c), a senior prosecuting attorney.
- 30 (c) A senior prosecuting attorney may be appointed as a special
- 31 prosecutor in the county in which the senior prosecuting attorney

1 previously served if the court finds that an appointment under this  
2 subsection would not create the appearance of impropriety.

3 (d) A person appointed to serve as a special prosecutor under  
4 this section has the same powers as the prosecuting attorney of the  
5 county. However, the appointing judge may limit the scope of the  
6 special prosecutor's duties to include only the investigation or  
7 prosecution of particular cases or particular grand jury  
8 investigations.

9 (e) The circuit court judge of the court in which a verified  
10 petition is filed under subsection (a) is disqualified from hearing  
11 the case. A special judge shall be selected in accordance with Trial  
12 Rule 79. The special judge must be a judge of a circuit, superior, or  
13 probate court in a county other than the county in which the  
14 special prosecutor is to serve.

15 (f) The court shall conduct an expedited hearing on the petition  
16 not later than fifteen (15) days after the verified petition is served  
17 on the prosecuting attorney.

18 (g) The court shall establish the length of the special  
19 prosecutor's term. If the target of an investigation by the special  
20 prosecutor is a public servant (as defined in IC 35-41-1-24), the  
21 court shall order the special prosecutor to file a report of the  
22 investigation with the court at the conclusion of the investigation.  
23 The report is a public record.

24 (h) If the special prosecutor is not regularly employed as a  
25 full-time prosecuting attorney or full-time deputy prosecuting  
26 attorney, the compensation for the special prosecutor's services:

27 (1) shall be paid to the special prosecutor from the  
28 unappropriated funds of the appointing county; and

29 (2) may not exceed:

30 (A) a per diem equal to the regular salary of a full-time  
31 prosecuting attorney of the appointing circuit; and

32 (B) travel expenses and reasonable accommodation  
33 expenses actually incurred.

34 (i) If the special prosecutor is regularly employed as a full-time  
35 prosecuting attorney or deputy prosecuting attorney, the  
36 compensation for the special prosecutor's services:

37 (1) shall be paid out of the appointing county's  
38 unappropriated funds to the treasurer of the county in which  
39 the special prosecutor regularly serves; and

1           **(2) must include a per diem equal to the regular salary of a**  
2           **full-time prosecuting attorney of the appointing circuit, travel**  
3           **expenses, and reasonable accommodation expenses actually**  
4           **incurred."**

5           Renumber all SECTIONS consecutively.

(Reference is to EHB 1510 as printed April 3, 2007.)

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Senator DROZDA